

Turkey's Disregard for the Freedom of Movement

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Through Emergency Decree Laws and Law no. 7188, the Turkish government has severely restricted the freedom of movement of hundreds of thousands of citizens by cancelling their passports or refusing to issue a new one. These laws and the corresponding practice not only violate the Turkish constitution but also contravene Turkey's human rights obligations under regional and international law.

After a failed coup attempt, the Turkish government declared the State of Emergency on 21 July 2016. Along with it came massive restrictions on the rights and freedoms of Turkish citizens, including the freedom of movement. The freedom of movement covers the [movements of individuals within a State as well as from one State to another](#). While the former ambit the right of a person to move freely and to choose a place of residence according to their own will within the territory of a State, [the latter covers the right to leave a country, including the home country, as well as the right to \(re-\) enter the home country](#). Although curtailments of this right may not seem utterly drastic compared to other rights and freedoms, the laws in question have restricted the rights of a larger number of citizens than any other measure.

[According to official statements during](#) emergency rule (2016-2018), the Turkish Government enacted thirty-two Emergency Decrees, under which [125.678](#) individuals were dismissed from public service and [300 scholarship students](#) and some 6000 private security guards were subjected to various sanctions. [These Emergency Decrees](#) (Arts. 3-5 of Decree Law no. 667, Decree Law nos. 668,669,670,672, 675, 677, 679, 683, 686, 689, 692, 693, 695, 697, 701) include almost identical provisions, commanding the cancellations of the passports of those who were dismissed from public service. They read as follows:

“... the relevant ministries and institutions shall immediately notify the relevant passport unit. Upon this notification, the relevant passport units shall cancel their passports...”

The Decree Laws, in addition to commanding the cancellation of the passports of those dismissed, also required the cancellation of the passports of the spouses of those dismissed:

“the passports held by the spouses of persons, whose names are notified to the relevant passport unit under Paragraph 1, may also be cancelled by the Ministry of the Interior on the same date when it is considered to be detrimental in terms of general safety.” (*Article 10 of the Decree Law no. 673*)

It should be noted that all these decree laws were approved by the Turkish Parliament and incorporated into the ordinary Turkish codex.

In December 2017, the Minister of the Interior announced that [234,419 passports had been revoked](#). Subsequently, 20,000 more public servants were dismissed, and the passports of these people and their spouses were cancelled. Those who previously had no passports were subjected to a passport ban. Hence, it is estimated that some 500,000 individuals are deprived of the freedom to leave the country. Although Turkey's interior ministry revoked the restrictions on [155,350 individuals](#) at the end of the state of emergency, there are still 125,678 individuals who have been dismissed and who are subject to the international travel ban. This is also the case for their spouses and their children under 18 as well as the spouses and minor children of those who have been declared as fugitives ([see e.g. the case of the journalist Can Dündar](#)). This means that more than 300,000 people are still being deprived of the freedom to leave the country as a result of administrative decisions.

Violations of fundamental and human rights

Turkey is a member of the United Nations and party to the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), all of which contain the right to freedom of movement.

Art. 13 (2) of the UDHR reads "Everyone has the right to leave any country, including his own, and to return to his country". According to Art. 12 (2) of the ICCPR and Art. 4 (2) of Protocol 4 of the ECHR, "Everyone shall be free to leave any country, including his own". Under the ECHR and the ICCPR, no restrictions shall be placed on the freedom of movement other than such as are provided for by law and are necessary in a democratic society in the interests of national security or public safety (order), for the protection of health or morals, or for the protection of the rights and freedoms of others. In its General Comment no:27, the UN CCPR clarifies that [the right to leave a country must include the right to obtain the necessary travel documents](#).

Although Turkey signed Protocol 4 of the ECHR, it has not ratified it yet. However, this did not prevent the ECtHR from condemning Turkey for its regulation and praxis in breaching the freedom of movement. In [#letmi# v. Turkey](#) and [Pa#ao#lu v. Turkey](#) the Court held that refusal of the Turkish authorities to grant the applicant a travel document in the absence of any criminal charge, was disproportionate and could not be regarded as "necessary in a democratic society" and consequently violates their right to respect for private and family life (Art 8 of the ECHR).

The cases [Telek, #ar and Kivilcim v. Turkey](#), which arose out of the passport cancellation practice and which are currently pending before the ECtHR, raise the same questions.

According to Art. 23 § 1&4 of the Turkish Constitution,

“[e]veryone has the freedom of residence and movement. A citizen’s freedom to leave the country may be restricted only by the decision of a judge based on a criminal investigation or prosecution”.

Turkey’s Ruling Party, the AKP, and its legislation and practice breaching the freedom of movement, is an emblematic case showing its flagrant disregard of the Constitution and its influence on the Turkish Constitutional Court (TCC). On 24 July 2019, the TCC annulled the regulation which empowered the government to cancel hundreds of thousands of passports but failed to publish its judgment until 31 October 2019. In the meantime, the AKP, having used its majority in the Parliament, passed a law (Law no. 7188, dated 24 October, 2019) that produces almost identical results to the one that the TCC had annulled ([Decision No: 2019/63](#)). As a consequence, the TCC’s annulment has not provided any remedy for those whose passports were cancelled.

A fig leaf of a remedy

Under Art. 2 of Law no. 7188, which relates to those who were subjected to a ban on the right to leave the country, the passport may be issued by the Ministry of the Interior. Prior to that, however, law enforcement units are requested to conduct research with respect to each application and the final decision will be based on these results. There are no other criteria to be applied to the evaluation. The Circular, dated 4 December 2019, which was published under Law no. 7188 by the Minister of the Interior, stipulates that those whose passports were cancelled shall apply to the Passport Bureau in their respective provinces. Their application shall be evaluated by a commission, named the Passport Administrative Decision Commission, which consists of chiefs of the Provincial Police Directorate’s Departments of Anti-Terror, Intelligence and Organized-Crime. If an application is refused, the applicant shall first appeal the decision before a commission established in the General Directorate of Security, and only after that can they file a case before the Administrative Court.

This kafkaesque regulation falls short of the requirements set up by the UN CCPR [General Comment no:27 of the UN CCPR \(para. 13\)](#) as it

1. impairs the essence of the right,
2. reverses the relation between right and restriction, between norm and exception,
3. lacks precise criteria, and
4. confers unfettered discretion on those charged with their execution.

Guilt by relation

Law 7188 and said Circular, are also flagrantly at odds with the constitutional rule that reads “*A citizen’s freedom to leave the country may be restricted only by the decision of a judge based on a criminal investigation or prosecution*”, and the TCC’s recent judgment ([Decision No: 2019/63](#)). But not only thousands of academics,

journalists and others who have lost their jobs in Turkey, but also their spouses and children, have been deprived of the freedom to leave the country for four years.

Considering that those dismissed [are subject to a life-time ban from working in the public service, which may compromise private sector employment as well](#), are victim of stigmatization, cannot travel to see their family members abroad, and that the ban does not have an expiry period, such a ban on the right to leave the country may infringe the right to lead a life in dignity, the right to work, the right to respect for private and family life. This cancellation of passports and the refusal to issue a new one, when sanctioned towards a spouse or the children of the target person (spouses of those dismissed or declared fugitive), may further amount to an infringement of the principle of individual (criminal) responsibility (Art. 38 Turkish Constitution, Art. 7 ECHR) which is non-derogable under Art. 15 of the ECHR and the Turkish Constitution. Accordingly, the [Venice Commission opines that measures \(passport ban, eviction from public houses\) have a punitive character, and they imply a kind of “guilt by association”](#) (paras. 144-146).

